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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,233	08/01/2001	Christian Knopfle	60,500-072	6017

27305 7590 12/03/2002

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/921,233		KNOPFLE ET AL.	
	Examiner		Art Unit	
	Pedro Philogen		3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>05</u> . | 6) <input type="checkbox"/> Other: |

Election/Restrictions

Applicant's election without traverse of claims 1-12 in Paper No. 8 is acknowledged. Also, applicant is reminded to cancel the non-elected claims in the response to this Office Action.

Claim Rejections - 35 USC § 102

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-6, 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Hair (6,197,037).

With respect to claim 1, Hair discloses a self-retaining implant for attaching a bone cover or a bone fragment, the implant comprising a support element (50) having an upper side (52) and a lower side (54), the lower side for facing a surface of the bone cover or the bone fragment; as best seen in FIG.3; and an extension (70) extending from the lower side of the support element and supporting therefrom at least one spike (60L,60R) which extends towards the bone cover or bone fragment and can be driven laterally into the bone cover or bone fragment; as best seen in Fig.5.

With respect to claim 2, Hair discloses an implant wherein the extension extends substantially at right angles to the support element; as best seen in FIGS1-6.

With respect to claim 3, Hair discloses an implant wherein the support element comprises two supports arms (50L, 50R) extending in opposite directions from the extension (70), the first of the two support arms cooperating with a skull bone and the second of the two support arms cooperating with the bone cover of bone fragment; as set forth in column 3, lines 1-45.

With respect to claim 4, Hair discloses an implant wherein the support element has a strip-like form; as best seen in FIGS.1-6.

With respect to claim 5, Hair discloses an implant wherein the lower side of the support element is concave or spherically curved at least in sections; as seen in FIGS.2,4.

With respect to claim 6, Hair discloses an implant wherein the spike extends from an end of the extension remote from the support element; as best seen in FIGS.1-6.

With respect to claim 1, Hair discloses a self-retaining implant for attaching a bone cover or a bone fragment to a skull, the implant comprising a support element (50) having an upper side (52) and a lower side (54), the lower side for contacting the bone cover or the bone fragment; as best seen in FIG.3; and an extension (70) extending from the lower side of the support element in such a manner that the support element and the extension form a T-shaped structure in cross-section; as best seen in FIGS.1-6 the extension supports at least one spike (60L,60R) which extends essentially parallel

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to the support element and can be driven laterally into the bone cover or bone fragment; as best seen in Fig.5.

Claims 1,7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Wellisz et al (6,168,596).

With respect to claim 1, Wellisz et al disclose a self-retaining implant for attaching a bone cover or a bone fragment, the implant (20) comprising a support element (21) having an upper side and a lower side, the lower side for facing a surface (22) of the bone cover or the bone fragment; as best seen in FIG.9; and an extension (23) extending from the lower side of the support element and supporting therefrom at least one spike (23a) which extends towards the bone cover or bone fragment and can be driven laterally into the bone cover or bone fragment; as best seen in Fig.9.

With respect to claim 7, Wellisz et al. disclose an implant wherein the spike has a triangular shape; as best seen in FIG.5.

With respect to claim 8, Wellisz et al. disclose an implant wherein the spike comprises sharpened edges; as set forth in column 5, lines 1-10.

With respect to claim 9, Wellisz et al disclose an implant wherein the support element defines a screw hole (33) therethrough.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al. (6,168,596) in view of Pohndorf et al. (5,904,683).

With respect to claim 9, it is noted that Wellisz et al. did not teach of a support element having a thickness increasing in the direction of the screw hole; as claimed by applicant. However, Pohndorf et al. evidence the use of a support element having a thickness increasing in the direction of the screw hole to strengthen the support element for receiving a screw and stabilize a bone.

Therefore, given the teaching of Pohndorf et al. it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the increasing thickness of Pohndorf et al in the support element of Wellisz et al to strengthen the support element for receiving a screw and stabilize a bone.

With respect to claim 10, Pohndorf et al teach a screw hole that is spherically curved, as best seen in FIG.11.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,458,133	10-2002	Lin
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Lin discloses a screw hole that is spherically curved.

6,302,884	10-2001	Wellisz et al
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6,190,389	2-2001	Wellisz et al.
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5,709,682	1-1998	Medoff
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 305-3591 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
November 27, 2002


PEDRO PHILOGENE
PRIMARY EXAMINER